

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ASTOR CLAY COLLINS)	
d/b/a MR. T'S CARWASH)	
COMPLAINANT)	
)	
VS.)	CASE NO. 90-279
)	
TOM THIENEMAN)	
BARBARA R. THIENEMAN)	
TOM THIENEMAN CO.)	
EDEN APARTMENTS SEWAGE TREATMENT PLANT)	
DEFENDANTS)	

ORDER TO ANSWER

Tom Thieneman, Barbara R. Thieneman, Tom Thieneman Co., and Eden Apartments Sewage Treatment Plant ("Defendants") are hereby notified that they have been named as defendants in a formal complaint filed on September 12, 1990, a copy of which is attached hereto. On its own motion, the Public Service Commission incorporates into this record, attached and marked Appendix A, the Unauthorized Utility Investigation Report relating to the Defendants' operation of the sewage treatment system which is the same subject matter of this formal complaint.

The Defendants are HEREBY ORDERED to file a written answer to the complaint and the factual allegations in the Unauthorized Utility Investigation Report, specifically paragraphs numbered 5, 6, 7, 8, 9, and 10, within 10 days of the date of service of this Order. Furthermore, the Defendants' answers shall specifically state the Defendants' position with justification as to whether or


not the sewage treatment plant in question is a utility as defined
by KRS 278.010(3).

Done at Frankfort, Kentucky, this 24th day of September, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

APPENDIX A

Commonwealth of Kentucky Public Service Commission

UNAUTHORIZED UTILITY INVESTIGATION REPORT

Tom Builders
Jefferson County, Kentucky

On May 15, 1990, the Public Service Commission received a complaint by telephone from Ms. Faye Brannon, owner of Mr. T Car Wash concerning rates proposed to be charged the car wash by Mr. Tom Thieneman, owner of the sewage treatment system serving this business, d/b/a Tom Builders. This sewage treatment system is located in southwest Jefferson County on Minette Court off Stephens Drive off Dixie Highway. This location is approximately 2.5 miles north of the intersection of 841 (Gene Synder Freeway) and US 60/31W (Dixie Highway) on Dixie Highway (see attached map).

The Commission having no knowledge of the existence of the above wastewater treatment system deemed it advisable to initiate an investigation. On May 25, 1990, an investigation was made to determine (a) is the company operating a public utility pursuant to state laws and regulations and (b) the conditions under which the utility is operating at the current time.

Investigation

This investigation included researching the Commission records, Natural Resources records, contacting the Louisville Jefferson County Board of Health, talking by telephone to Mr. Thieneman and an on site inspection of the plant.

During the investigation the following information was established:

1. Tom Builders' first construction permit was issued on May 15, 1967 for a 3,000-gallon per day wastewater treatment plant.

2. Tom Builders' second construction permit to expand to a 39,500-gallon per day wastewater treatment plant was issued on May 20, 1971.

3. The wastewater treatment plant certified operator is Eubank Hall and Associates.

4. Beckman Laboratory does testing for Tom Builders.

5. This wastewater treatment system serves Eden Apartments (approximately 200 units), Pro Bowl I Bowling Alley, McDonald Restaurant, Taco Tico Restaurant, Wendy's Restaurant, Pizza Hut Restaurant, Mr. Gattis Restaurant and Mr. T Car Wash.

6. The monthly charges for sewage service are as follows: McDonalds - \$70; Eden Apartments - 0; Pro Bowl I Bowling Alley - \$100; Mr. T Car Wash - \$100; Taco Tico - \$150; Pizza Hut - \$150; Wendy's - \$150; Mr. Gattis - \$100.

7. A Certificate of Necessity and Convenience has not been issued for this sewage system by the Commission.

8. An annual report or rules and regulations concerning its sewage system have not been filed with the Public Service Commission.

9. The owner of this sewage treatment system serving the above customers is Tom Thieneman. His address is as follows:

Mr. Tom Thieneman
800 Minette Court
Louisville, KY 40258
Telephone No. (502) 937-6522

or

Pro Bowl II Bowling Alley
6220 Old Shepherdsville Road
Louisville, KY 40228
Telephone No. (502) 964-4183

10. Certain improvements/corrections are necessary to bring the utility to an acceptable operating condition and into compliance with Commission rules and regulations. They are as follows:

a. An air filter for blower/motor unit No. 1 is needed.
(807 KAR 5:071, Section 7, 1)

b. The chlorine contact basin needs to be checked for sludge deposits and if found removed. (807 KAR 5:071, Section 7, 1)

c. The scum needs to be kept off the surface of the clarifier. (807 KAR 5:071, Section 7, 1)

d. The plant is currently being operated without a comminutor. As long as the plant can be operated satisfactorily and produce an acceptable effluent the Commission may not require the use of a comminutor. However, the utility must monitor plant operations and immediately install a functioning comminutor should conditions warrant. (807 KAR 5:071, Section 7, 1)

Submitted,
June 8, 1990


Larry N. Updike
Utility Investigator

RECEIVED

Before the Public Service Commission

SEP 12 1990

PUBLIC SERVICE
COMMISSION

Astor Clay Collins
d/b/a Mr. T's Carwash
Complainant

vs.

No. 90 279

Tom Thieneman
Barbara R. Thieneman
Tom Thieneman Co.
Eden Apartments Sewage Treatment Plant
Defendants

COMPLAINT

The complaint of Astor Clay Collins respectfully shows:

(a) That Astor Clay Collins of 1442 South Lake Drive, Prestonsburg, Kentucky, 41653 operates a carwash known as Mr. T's Carwash at 8592 Dixie Highway, Louisville, Kentucky 40258.

(b) That Tom Thieneman, Barbara R. Thieneman, Tom Thieneman Co., and/or Eden Apartments Sewage Treatment Plant with the address of 60220 Old Shepherdsville Road, Louisville, Kentucky 40228 operates a sewage treatment plant which serves the property at 8592 Dixie Highway, Louisville, Kentucky on which Mr. T's Carwash operates.

(c) That or about September 6, 1988 Complainant entered into an Option to Purchase real and personal property, including all fixtures used in connection with the business of Mr. T's Carwash, a copy of which is attached hereto as Exhibit "A" and by this reference is incorporated herein.

(d) That on or about November 16, 1988 Complainant purchased the real and personal property comprising Mr. T's Carwash from the Defendant, Tom Thieneman and Barbara R. Thieneman. At the time of entering into the Option to Purchase through and including the date of purchase, Defendants did not make Complainant aware of the operation of the Sewage Treatment Plant by Defendants. Approximately two months after the purchase of the real and personal property the Defendant, Tom Thieneman, requested that payments be made to him in the amount of ONE HUNDRED FIFTY DOLLARS (\$150.00) per month beginning November 16, 1988 and requested that Complainant pay all prior months owed and to commence paying ONE HUNDRED FIFTY DOLLARS (\$150.00) per month. At that time

Complainant first became aware of the existence and use of the Sewage Treatment Plant. After investigation by Complainant it appears that one or all of the Defendants constructed the Sewage Treatment Plant to service numerous apartment buildings owned by one or more of the Defendants in the area and three restaurant buildings leased and used as the following businesses:

Mr. Gattis
8594 Dixie Highway

Wendy's Old Fashioned Hamburgers
8596 Dixie Highway

McDonald's
8600 Dixie Highway

At no time has the Complainant entered into any agreement, in writing or otherwise, with any Defendant regarding payment of a regular monthly sewage charge.

Complainant requested that Defendants exhibit how the Defendants arrived at the monthly charge, i.e., whether it was based on effluence or amount of water used, and did not receive a satisfactory response. Later, the Defendants stated that Complainant could pay \$100 per month but again could not explain upon what that figure was based.

(e) That Complainant believes that one or more of the Defendants operates a Sewage Treatment Plant as a "utility", as defined by 807 KAR 5:006 Section (2) and KRS 278.010(3), operates outside of the guidelines of the Public Service Commission specified in the Kentucky Revised Statutes and the Kentucky Administrative Regulations, and does not establish its tariffs in accordance with the guidelines of the Public Service Commission as established by 807 KAR 5:011 and 807 KAR 5:071.

WHEREFORE, complainant asks that the Public Service Commission conduct an investigation into the status of the Sewage Treatment Plant in question and make a determination as to whether it is a utility as defined by 807 KAR 5:006, Section (2) and KRS 278.010(3) for purposes of regulation under the guidelines of the Public Service Commission. Further, Complainant asks that should the Public Service Commission determine that the subject Sewage Treatment Plant should be a regulated utility, that the Defendants be required to file with the Public Service Commission its tariffs in accordance with 807 KAR 5:011 Section (2) et seq. and 807 KAR 5:071 Section (3) and obtain approval of same from the Public Service Commission. Lastly, Complainants ask that the Public Service Commission enjoin the Defendants from ceasing to provide sewage treatment services to the Complainant during the pendency of this investigation and any subsequent hearings.

Dated at Louisville, Kentucky, this 19th day of
September, 1990.

ASTOR CLAY COLLINS, Complainant

By 

Tracy A. Simmons
John T. Rippy

MORGAN & POTTINGER, P.S.C.
601 West Main Street
Louisville, Ky. 40202
(502) 589-2780

EXHIBIT A
7124

Rev.

OPTION TO PURCHASE
(Exhibit "A" attached)

In consideration of Three Thousand Dollars deposited with Tom Thieneman & Barbara R. Thieneman by Astor Clay Collins, receipt of which is hereby acknowledged, we hereby agree to sell and convey to Astor Clay Collins his heirs or assigns, our entire ownership of the Mr. T's Carwash, located on Dixie Highway near West Pages Lane and Stephen Drive in Jefferson County, Kentucky. Included in this agreement to sell are all real and personal property including all fixtures used in connection with the business of Mr. T's Carwash, (see Exhibit "A" attached for the Deed to be executed by SELLERS upon payment in full in the amount of One Hundred Sixty Five Thousand (\$165,000.00) for the optioned property. The closing to be held in Jefferson County, Kentucky at a location to be selected by the BUYER. The term of this option is 60 days with the first day beginning on the date of signatures hereof. Should SELLERS fail or be unable to execute and deliver an unencumbered General Warranty deed as per Exhibit A, then they shall return the deposit money in full to the BUYER on or before the expiration date of this option. BUYER may elect to apply the deposit towards the purchase price of the property which would leave a balance owing of One Hundred Sixty Two Thousand Dollars (\$162,000.00) or pay the full purchase price and have the full deposit refunded. Should the SELLERS meet their obligations set forth herein and the BUYER for any other reason fail to purchase the property then the deposit money shall be

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retained by the SELLERS as payment in full for any and all liquidated damages. BUYER will assume no obligations of SELLERS except those incurred in the day-to-day business operations such as insurance, taxes due and payable in the calendar year 1988, and normal supplies and inventory, all of which shall be prorated on the date of closing. Both parties acknowledge that there are no brokers or sales commissions involved, and between the date of execution and date of closing, SELLER shall retain full ownership rights. Any sales taxes involved in the closing will be the responsibility of the BUYER.

Any and all notifications shall be deemed sufficient if mailed to the following addresses:

Tom and Barbara Thieneman
9600 Cane Run Road
Louisville, Kentucky 40258

Astor Clay Collins
1442 South Lake Drive
Prestonsburg, Kentucky 41653

Witness our signature this 6th day of September, 1988.

Witness:

SELLER:

Tom Thieneman
TOM THIENEMAN
Barbara R Thieneman
BARBARA R. THIENEMAN

BUYER:

Astor Clay Collins
ASTOR CLAY COLLINS

EXHIBIT A
7/2

11/25

GENERAL WARRANTY DEED

THIS DEED OF CONVEYANCE, made and entered into this _____ day of _____, 1988, by and between TOM THIENEMAN and BARBARA R. THIENEMAN, his wife, GRANTORS, of 9600 Cane Run Road, Louisville, Jefferson County, Kentucky 40258 and ASTOR CLAY COLLINS, single, GRANTEE, of 1442 South Lake Drive, Prestonsburg, Floyd County, Kentucky 41629.

WITNESSETH: That for and in consideration of One Hundred Sixty Five Thousand (\$165,000.00), the receipt of which is hereby acknowledged, Grantors hereby bargains, grants and conveys unto the Grantee their entire interest, rights and title to the following described property located in Jefferson County, Kentucky:

The description of the property conveyed herein via the Jefferson County Clerk's Office would be as follows: Beginning at the NW corner of Lot 3, as shown on the Plat of Clark's subdivision of the Adams and Springle Farm, which is recorded in Plat and Subdivision Book 2, Page 249, of The Jefferson County Clerk's Office, and with said beginning being N36-02' 57"E, 857.7 feet more or less from the centerline of Stephen Drive; Thence with the existing property line N88-15' W, 114.89 feet; NOW HOWEVER, establishing the complete description as per plat of record, (as noted in the Jefferson County Clerk's Office) with the same beginning point as noted above, but with the Bearing calls as per the plat of record: With said beginning being N88-15' 13"E, 857.7 feet more or less from the centerline of Stephen Drive; Thence with the existing property line of Irvin Cooper (or others), N87-36' 07" W, 371.23 feet to an iron pin; Thence S3-29' 38" E, 225.27 feet to an iron pin; Thence N88-15' 13"E, 114.89 feet to an iron pin; Thence S88-15' 13"E, 225.27 feet to an iron pin; Thence N36-15' 13"E, 114.89 feet to the point of beginning, and containing 0.76 acre more or less.

EXHIBIT A

[Signature]

Any and all notifications shall be deemed sufficient if mailed to the following addresses:

Tom and Barbara Thieneman

9600 Cane Run Road

Louisville, Kentucky 40258

Astor Clay Collins

1442 South Lake Drive

Prestonsburg, Kentucky 41653

Witness our signature this _____ day of _____, 1988.

Witness:

SELLER:

TOM THIENEMAN

BARBARA R. THIENEMAN

BUYER:

ASTOR CLAY COLLINS